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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,403	04/03/2001	Kenneth W. Shrum	10003507-2	1629

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EXAMINER

PHAM, HUNG Q

ART UNIT PAPER NUMBER

2172

DATE MAILED: 06/17/2004

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/825,403

Applicant(s)

SHRUM ET AL.

Examiner

HUNG Q PHAM

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 5-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 10-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's request for the withdrawal of the rejection of claim 10 under 35 USC first paragraph was considered, but recitation in claim 10 of *configuring and executing user transaction tests and reporting user transaction test results* was not supported by the referred paragraphs [0009], [0010], [0015]-[0019]. Therefore, the rejection of claim 10 under 35 USC 112 still maintains.

2. Applicant's arguments with respect to the rejection of claims 1-4 and 10-14 under 35 USC 102 and 103 have been considered but are moot in view of the new ground(s) of rejection.

Election/Restrictions

3. This application contains claims 5-9 drawn to an invention nonelected without traverse in Office Action No. 6. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Requirement for Information, Public use or Sale

4. As indicated in the specification on page 2, paragraph 0018, Firehunter® products could be used at a user site to enable a user to measure and monitor an e-commerce solution's performance. An issue of public use or on sale activity has been

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raised in this application. In order for the examiner to properly consider patentability of the claimed invention under 35 U.S.C. 102(b), additional information regarding this issue is required as follows:

(1) Hewlett-Packard Firehunter Concepts Guide, printed in April 1999, and having part no. 5969-2201.

Applicant is reminded that failure to fully reply to this requirement for information will result in a holding of abandonment.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 10 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. As in claim 10, the step of ***configuring and executing user transaction tests and reporting user transaction test results*** was not described in the specification.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. **Claims 1 are rejected under 35 U.S.C. 102(e) as being anticipated by Bartz et al. [USP 6,701,342 B1].**

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Regarding to claims 1-2 and 14, Bartz teaches a method and apparatus of measuring the quality of service being provided to customers and to determine whether or not the quality of service provided by Internet Service Providers (ISP) or Enterprise

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Service Providers (ESP) is in compliance with an service level agreements SLA that characterizes the level of service to be provided to customers. The Bartz method uses Firehunter such as Firehunter/PRO product (Col. 3, Lines 63-66). As shown in FIG. 1 is *an e-commerce installation comprising a plurality of tiers* with various associated resources such as router, DNS server, proxy server, web server, DHCP server... as *a plurality of servers* that are utilized by an ISP in providing various Internet services to customers (Col. 4, Lines 30-46). The Firehunter resides on a diagnostic/measurement server (DMS) 1 (Col. 3, Lines 15-27) and collects measurement data from various resources by using an *agent* that resides on the machine from which measurements are being obtained (Col. 4, Lines 47-67). In other words, the Bartz technique as discussed illustrates the step of *installing each of a plurality of software agents onto its own one of a plurality of servers, wherein each of the plurality of servers is associated with one of the plurality of tiers*. There are two types of agents, active and passive measurement. Passive measurements monitor log files and system utilities to gather information available only at a server (Col. 4, Lines 47-67). As seen, the technique of monitoring log file for gathering information at its associated server indicates the claimed *each of the plurality of software agents retrieves at least one of the log files from its associated one of the plurality of servers, and reading the log files*. The technique of monitoring system utilities for gathering information at its associated server illustrates the step of *querying the databases to obtain information stored therein, the information comprising performance measurement of the installation*. Bartz further discloses the step of *graphically presenting the measurement* as in FIG. 3.

Regarding to claim 2, Bartz teaches all the claimed subject matters as discussed in claim 1, Bartz further discloses *the plurality of tiers comprises a web servers tier, a session servers tier, a transaction servers tier, and a database servers tiers* (FIG. 2, Col. 4, Lines 30-46).

Regarding to claim 14, Bartz teaches a method and apparatus of measuring the quality of service being provided to customers and to determine whether or not the quality of service provided by Internet Service Providers (ISP) or Enterprise Service Providers (ESP) is in compliance with an service level agreements SLA that characterizes the level of service to be provided to customers. The Bartz method uses Firehunter such as Firehunter/PRO (Col. 3, Lines 63-66). As shown in FIG. 1 is *an e-commerce installation* with various associated resources such as router, DNS server, proxy server, web server, DHCP server... as *a plurality of servers* that are utilized by an ISP in providing various Internet services to customers (Col. 4, Lines 30-46). The Firehunter resides on a diagnostic/measurement server (DMS) 1 (Col. 3, Lines 15-27) and collects measurement data from various resources by using an *agent* that resides on the machine from which measurements are being obtained (Col. 4, Lines 47-67). In other words, the Bartz technique as discussed illustrates the step of *associating software agents to each of the servers*, and *installing the software agents on the respective associated servers*. There are two types of agents, active and passive measurement. Passive measurements monitor log files and system utilities to gather information available only

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at a server (Col. 4, Lines 47-67). As seen, the technique of monitoring log file and system utilities for gathering information at its associated server indicates the claimed *activating the software agents to access the log files on associated servers to obtain performance measurements, activating the software agents to query the databases on the associated servers to obtain performance measurement, and FIG. 3 is the claimed graphically presenting the measurement (FIG. 3).*

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Firehunter [HP Firehunter/PRO 2.0 and Firehunter/L 3.0].

Regarding to claim 10, Firehunter is a Hewlett-Packard monitoring and measurement tool, such as HP Firehunter/PRO 2.0 and Firehunter/L 3.0, and, generally, we can call them Firehunter. Firehunter is used to test and monitor Internet Service Providers (ISP) or Enterprise Service Providers (ESP) services as *e-commerce installation*. As shown in Firehunter/PRO 2.0 reference, the figure indicates the step of *configuring and executing user transaction tests and reporting user transaction test results, measuring system performance data for each of the web server, the session server, and transaction server, and the database server*. The Firehunter/PRO 2.0 reference does not illustrate the step of *measuring business performance data comprising monetary volume transacted by the e-commerce installation during a time period*. However, one of Firehunter/L 3.0 features is to allow a user to generate revenues with sophisticated reporting including multi-line graphs and web-based reporting (Features and Benefit: Firehunter/L 3.0), and obviously, the generated revenues is measured similarly to the events as shown in Firehunter/PRO 2.0 with the indicated time period. Thus, the Firehunter/L 3.0 special feature performs the step of *measuring business performance data comprising monetary volume transacted by the e-commerce installation during a time period*.

Regarding to claims 11, 12 and 13, Firehunter teaches all the claimed subject matters as discussed in claim 10, and further discloses *the business performance data*

further comprises financial data transacted by the e-commerce installation during a time period, processing the system performance data to generate system graphics illustrating system performance measured against system performance baselines and system performance thresholds; and processing the business performance data to generate business graphics illustrating billing performance measured against business performance baselines and business performance thresholds, collecting the system performance data and the business performance data from the e-commerce installation; and transferring the system performance data and the business performance data to the computer system (HP Firehunter/PRO 2.0 and Firehunter/L 3.0).

Allowable Subject Matter

11. Claims 3 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding to claim 3, Bartz fails to suggest or disclose *the web servers tier comprises a plurality of web servers with each of said the plurality of web servers generating log files, said the log files comprising hit rate data, hosts served data, data volume data, error rates data, log file size monitor data, system load data, and generic data, said the session servers tier comprises a plurality of session servers with each of said the plurality of session servers generating a plurality of log files, said the plurality of log files comprising users served data, restarts data, IM status data, IM load data, database connectivity data, error rates data*

and system load data, said the transaction servers tier comprises a plurality of transaction servers with each of said the plurality of transaction servers generating a plurality of log files and a plurality of databases, said the log files comprising open and discarded cart rates data, shoppers in store data, authorized, cancelled, declined data, payment service errors data, inventory status data, and system load data, and said the databases comprising sales per hour data, items sold per hour data, new order rates data, processed order rates data, fulfilled order rates data shipping network connectivity data, orders awaiting authorization data, and orders awaiting shipment data; and said the database servers tier comprises a plurality of database servers with each of said the plurality of database servers generating a plurality of databases, said the plurality of databases comprising database access performance data, database size monitor data, database connectivity error rate data, and system load data.


Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUNG Q PHAM whose telephone number is 703-605-4242. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN E BREENE can be reached on 703-305-9790. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Examiner Hung Pham
June 10, 2004


SHAHID ALAM
PRIMARY EXAMINER